

ORDERED.



Dated: May 18, 2011

Eileen W. Hollowell

EILEEN W. HOLLOWELL
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:)	
)	Involuntary Chapter 11
)	
)	Case No. 4:11-bk-06731-EWH
U.S. CORP.,)	
)	MEMORANDUM DECISION RE:
)	DISMISSAL OF INVOLUNTARY
)	PETITION AND RELATED
Involuntary Debtor.)	PLEADINGS

I. FACTS AND PROCEDURAL HISTORY

On March 16, 2011, Marshall E. Home ("Home"), on his own behalf as well as on behalf of some sixty-six other petitioning creditors (collectively, the "Petitioning Creditors"), filed an involuntary Chapter 11 petition (the "Involuntary Petition") against an entity called U.S. Corp. (the "Alleged Debtor") and what Home calls its "agents and/or instrumentalities."¹ More precisely, the Involuntary Petition's caption is styled as "U.S. Corp and its federal STATE OF ARIZONA, employees, agents, instrumentalities, [as] attached list as Attachment 1" (the "Attachment"). The Involuntary Petition lists the

¹ The Court takes judicial notice of the statements made by Petitioning Creditors in papers filed on this Court's docket. Fed. R. Evid. 201(c); see also In re Parkway Sales and Leasing, Inc., 411 B.R. 337, 343 (Bankr. E.D. Tex. 2009); In re Scarpinito, 196 B.R. 257, 267 (Bankr. E.D.N.Y. 1996).

1 Alleged Debtor's street address care of a State of Arizona employee as "Southern
2 Representative" at 410 W. Congress St., Tucson, Arizona, the address of a government
3 building in downtown Tucson, Arizona. The Involuntary Petition lists the Alleged
4 Debtor's principal place of business as "Washington D.C. And 50 Federal States, Pima
5 County, Maricopa County, Pinal County." The Alleged Debtor's mailing address is listed
6 as "Office of the US Attorney, District of Arizona, 405 W. Congress, Suite 4800, Tucson,
7 Arizona 85701 and the Office of the U.S. Attorney, Attention: Eric Holder, Chief, U.S.
8 Department of Justice, 950 Pennsylvania N.W., Washington, D.C. 20530."

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10 The Attachment originally listed seventeen "instrumentalities," but Home has
11 repeatedly amended it. The original list included a number of Arizona law firms; the
12 Mortgage Electronic Registration Systems, Inc.; insurance companies; residential
13 mortgage lenders; and a number of banks. In later filings, Home has added "agents"
14 and "instrumentalities," including the Maricopa County Sheriff.

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16 A summons was issued by the Clerk of the Court on the same day Home filed
17 the Involuntary Petition (DE 3). There is no evidence that the summons was served on
18 any party named in the Involuntary Petition or the Attachment, as amended.

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20 The Involuntary Petition contained the signatures of two other individuals in
21 addition to Home's. All three purported to hold "Exemption" claims against the Alleged
22 Debtor. Home claims that the Alleged Debtor is indebted to him for over \$3 billion. The
23 other signatories, Jerald J. Gustafson and James P. Moreno, stated they held claims of
24 \$1 million each. Since the petition date, there have been thirty-three amendments to
25 add additional petitioning creditors to the Involuntary Petition. The Involuntary Petition
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included certifications, under penalty of perjury, by each of the signatories that the statements in the Involuntary Petition were true.

On April 8, 2011, Home began filing “Motion[s] for Order[s] Authorizing Redemption of Personal Property” (the “Redemption Motions”). The Redemption Motions sought the turnover of personal property, such as “CUSIP bonds” in the amount of \$1 million each,² asked the Court to recognize a Petitioning Creditor’s exemption rights in real property, asserted trademark infringement claims, and/or asked to remain in possession of real property in the face of a pending foreclosure sale or other collection action. Home filed sixty-nine Redemption Motions. The Court routinely denied them on the grounds that they sought relief not available to creditors under the Bankruptcy Code. At one point, Home attempted to file copies of the orders denying the Redemption Motions with a stamp across their face asserting the orders were being “accepted for value.” Because no proper bankruptcy purpose was served by filing such stamped orders, an order was issued on April 22, 2011 (DE 164) directing the Clerk of the Court to refuse to accept such filings.

Home, on his own behalf and on behalf of the other Petitioning Creditors, has filed eighteen “Notice[s] of Removal” (the “Removals”) removing state court litigation to this Court. In conjunction with some of the Removals, Home filed motions to waive the adversary filing fees, which were denied. The Removals include long, rambling text, but in most cases the removed action involved pending foreclosure, forcible entry and detainer, or other collection actions against the Petitioning Creditors.

² CUSIP generally refers to the Committee on Uniform Securities Identification Procedures, which supplies a nine character identification number for securities traded in the United States.

1 On April 19, 2011, the Court issued an "Order to Show Cause as to Why
2 Involuntary Case Should Not Be Dismissed" (the "Dismissal Show Cause Order") on
3 notice to Home and all the Petitioning Creditors who had been added as of that date.
4 The Dismissal Show Cause Order put the Petitioning Creditors on notice that the
5 Involuntary Petition was subject to dismissal as having been improperly filed against a
6 governmental unit. On April 26, 2011, the court issued a "Show Cause as to Why the
7 Court Should Not Enter a Pre-Filing Order Limiting the Right of Petitioning Creditors to
8 File Pleadings in the Bankruptcy Court for the District of Arizona" (the "Bar Show Cause
9 Order"). The Bar Show Cause Order put the Petitioning Creditors on notice that they
10 might be found to be vexatious litigants and, therefore, subject to a bar order. Hearings
11 on both show cause orders was set for May 18, 2011 (the "Show Cause Hearing").
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14 On May 16, 2011, Home filed a "Notice" to continue the Show Cause Hearing
15 because of an emergency in a bankruptcy case in Illinois and because Home's filing of
16 an adversary proceeding³ naming this Judge as a defendant disqualified her from
17 conducting the Show Cause Hearing. Home also asked for a jury trial on the show
18 cause issues.⁴ The continuance was denied on May 16, 2011 (DE 349) as untimely,
19 and because a party cannot disqualify a judge by suing her, United States v. Studley,
20 783 F.2d 934, 940-41 (9th Cir. 1986). The request for a jury was denied because the
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24 ³ Home v. Hollowell, Adversary No. 4:11-ap-00864.

25 ⁴ On May 5, 2011 (DE 309), Home also filed an untimely "Request for Jury Trial as Per Bk Rule
26 426 if the Court Continues to Hear Frivolous Complaints by Debtors." Because it is duplicative
27 of the request in the Notice and because there is no Federal Rule of Bankruptcy Procedure 426,
28 the Court will not consider it.

1 matters being considered at the Show Cause Hearing are exclusively matters for a court
2 to decide. Berardinelli v. Castle & Cooke Inc., 587 F.2d 37, 38-39 (9th Cir. 1978).

3 On May 18, 2011, the Court held the Show Cause Hearing. At the Show Cause
4 Hearing, the Petitioning Creditors did not produce any evidence that the Alleged Debtor
5 is intended to be something other than a governmental unit. They did not produce
6 evidence of the relationship of the Alleged Debtor to the so-called agents on the
7 Attachment. They also did not produce any evidence that the Petitioning Creditors hold
8 claims against the entities named in the Involuntary Petition or the Attachment. Instead,
9 Mary Home questioned the jurisdiction of the Court and demanded to know in which
10 court the Petitioning Creditors should assert their claims as "secured creditors" under
11 the Uniform Commercial Code. Consistent with a motion filed on May 16, 2011 (DE
12 353), Federal National Mortgage Association ("FNMA") and law firm Tiffany and Bosco,
13 parties named in the Attachment, requested attorneys' fees, and damages, including
14 punitive damages, be imposed against the Petitioning Creditors. At the end of the Show
15 Cause Hearing, the Court announced that a written order would be issued dismissing
16 the Involuntary Petition.
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20 **II. ISSUES**

- 21 (1) Should the Involuntary Petition be dismissed because a governmental unit
22 may not be an involuntary debtor?
- 23 (2) Should the Involuntary Petition be dismissed because it was filed in bad
24 faith?
- 25 (3) What is the effect of dismissal on pleadings filed in the case and on
26 related proceedings?
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III. DISCUSSION

A. The Entities Named on the Involuntary Petition and Attachment Are Not Proper Involuntary Debtors.

(1) Governmental Units May Not Be Involuntary Debtors Under § 303.

Under the Bankruptcy Code, an involuntary petition may only be commenced against a “person.” 11 U.S.C. § 303(a). Section 101(41) defines a person to include an “individual, partnership, and [a] corporation,” but explicitly excludes governmental units, except in certain circumstances not present here. 11 U.S.C. § 101(41). The Petitioning Creditors have not satisfactorily explained the identity of U.S. Corp or its relationship to the entities on the Attachment, but it is clear from the many pleadings on the docket that the Petitioning Creditors are asserting that the United States government is an involuntary debtor. The Involuntary Petition lists U.S. Corp’s address as a building occupied by governmental offices in downtown Tucson, Arizona. U.S. Corp’s principal place of business is listed as being in Washington D.C. Eric Holder, the United States Attorney General, is listed as a point of contact. The Petitioning Creditors, including Mary Home, did not offer any evidence at the Show Cause Hearing that U.S. Corp. is not a governmental entity. Because the Involuntary Petition has been filed against an entity not eligible to be an involuntary debtor, the Involuntary Petition must be dismissed as to all of the named governmental units.

1 (2) Agents and Instrumentalities Listed on the Attachment Are Not Affiliates of
2 an Involuntary Debtor

3 The Petitioning Creditors list the parties on the Attachment, as amended, as the
4 alleged “agents and/or instrumentalities” of U.S. Corp. The Bankruptcy Code defines
5 neither “agent” nor “instrumentality.” The term “affiliate” is defined by 11 U.S.C.
6 § 101(2), but there is no evidence that any of the entities or individuals named on the
7 Attachment are affiliates of U.S. Corp. Accordingly, none of the parties listed on the
8 Attachment are involuntary debtors, and the Involuntary Petition must be dismissed
9 against them.
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11 B. Even if the Involuntary Petition Was Filed Against a Proper Debtor, It Should Be
12 Dismissed as Having Been Filed in Bad Faith

13 Section 303(i) of Title 11 does not define the term “bad faith,” but in the Ninth
14 Circuit, courts apply an objective standard in analyzing whether an involuntary petition
15 has been filed in bad faith. In re Wavelength, Inc., 61 B.R. 614, 619-20 (9th Cir. BAP
16 1986). That standard asks “what a reasonable person would believe” at the time they
17 filed the petition. Id. quoting In re Grecian Heights Owners’ Ass’n, 27 B.R. 172, 173
18 (Bankr. D. Or. 1982). The record demonstrates that the Petitioning Creditors filed this
19 case as a pretext to stop various collection actions including foreclosures, forcible entry
20 and detainer actions, and tax garnishments. A review of the docket and claims register
21 demonstrates that the Involuntary Petition was filed in an effort to manipulate the
22 bankruptcy process and to harass and delay Petitioning Creditors’ creditors. The Court
23 finds, therefore, that the case was filed in bad faith under 11 U.S.C. § 303(i).
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1 C. Effect of Dismissal

2 (1) Proof of Claims

3 The claims allowance process is used to determine the bankruptcy estate's
4 liability on allowed claims. Because the Court has dismissed this case, there is no
5 estate and therefore nothing to distribute to claimants. Accordingly, all of the proof of
6 claims filed in this case have no legal effect. The dismissal of the case also means that
7 no further claims may be filed. Furthermore, the Court has reviewed a number of the
8 173 claims filed in this case and finds that they are without merit. Like the Involuntary
9 Petition, the proofs of claim were filed in bad faith and, for that additional reason, have
10 no legal effect.
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13 (2) Removed Cases

14 Bankruptcy courts have jurisdiction to hear all claims arising under or related to a
15 bankruptcy case. See 28 U.S.C. §§ 157, 1334. Federal Rule of Bankruptcy Procedure
16 9027 governs the procedure for removing a state court case to a bankruptcy court.

17 Home, on his own behalf and the other Petitioning Creditors, has removed a
18 number of cases from various state courts around the country. Those cases are
19 attached to this order (Exhibit "A") and include cases in which no separate adversary
20 was opened (collectively, the "Removed Cases"). None of the procedural requirements
21 of Fed. R. Bankr. P. 9027 were satisfied in any of the Removed Cases.
22

23 The dismissal of the Involuntary Petition means that none of the Removed Cases
24 arises in or is related to an existing bankruptcy case and therefore the Removed Cases
25 will all be remanded to the courts from which they were removed. Because some cases
26 were improperly removed from other bankruptcy courts or purported to remove pending
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1 trustee's sales, those matters will be dismissed.⁵ Separate orders to that effect will be
2 issued on each of the Removed Cases.

3 (3) Associated Cases

4 On May 12, 2011, Home filed an adversary complaint naming numerous
5 defendants including this Judge. It asserts unsupportable claims and was filed for the
6 improper purpose of disqualifying the Court from conducting the Show Cause Hearing.
7 It will be dismissed with prejudice by separate order which will also quash all summons
8 issued in conjunction with its filing.
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10 D. Damages

11 The Dismissal Show Cause Order did not put the Petitioning Creditors on notice
12 that damages might be entered against them under 11 U.S.C. § 303(i). FNMA 's Motion
13 for Sanctions was not filed until May 16, 2011. Because the Petitioning Creditors were
14 not given adequate time to respond to FNMA's request for damages and sanctions, no
15 damages or sanctions will be awarded.
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17 Dated and Signed Above.

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20 Notice to be sent through the
21 Bankruptcy Noticing Center "BNC"
22 to the following

23 Marshall E. Home
24 3051 W. Mexico Street
25 Tucson, AZ 85746

26 All Petitioning Creditors

27 ⁵ The Court dismissed Adversary No. 4:11-ap-00664 on May 16, 2011 because of its
28 procedural defects under Fed. R. Bankr. P. 9027.

Office of the U.S. Trustee
230 North First Ave., Suite 204
Phoenix, AZ 85003

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4 **Exhibit A**

5 The following removed cases will be remanded to the court from which they were
6 removed or dismissed:

- 7 (a) Federal National Mortgage Association v. Carr, adversary number 4:11-
8 ap-00702-EWH, removed from the Superior Court for Maricopa County,
9 case number CV2011-000941;
10 (b) Federal National Mortgage Association v. Frank, adversary number 4:11-
11 ap-00703-EWH, removed from the Superior Court for Yavapai County,
12 case number V13002011-80038;
13 (c) Federal National Mortgage Association v. Home, adversary number 4:11-
14 ap-00704-EWH, removed from the Superior Court for Pima County, case
15 number 2010 3852;
16 (d) Bay View Loan Service, LLC v. Jones, adversary number 4:11-ap-00705-
17 EWH, removed from the Superior Court for Los Angeles County with an
18 unknown case number.
19 (e) Federal National Mortgage Association v. Home, adversary number 4:11-
20 ap-00706-EWH, removed from the Superior Court for Pima County, case
21 number 2010 3852.
22 (f) Pima County Sheriff Department v. Castle, adversary number 4:11-ap-
23 00710, removed from the Consolidated Justice Court for Pima County,
24 case number 1102638;
25 (g) Erbin v. Talbot, adversary number 4:11-ap-00711-EWH, a purported
26 removal of a pending trustee's sale in Kane County, presumably in the
27 State of Illinois;
28 (h) Federal National Mortgage Association v. Brook, adversary number 4:11-
 ap-00759-EWH, removed from a Utah County court in the State of Utah,
 case number 110100260.
 (i) Federal Home Loan Corp. v. Brook, filed on the administrative docket at
 docket entry 169 and removed from a Utah County court in the State of
 Utah, case number 110100260.

- 1 (j) Smisko v. Recontrust Company, N.A., filed on the administrative docket at
2 docket entry 170 and removed from Pima County Superior Court, case
3 number 20112791.
- 4 (k) MERS v. Morgan, filed on the administrative docket at docket entry 229
5 and purported to be removed from the State of Utah with an unknown
6 case number.
- 7 (l) Wells Fargo Bank, N.A. v. Pekrul, filed on the administrative docket at
8 docket entry 313 and purported to be removed from an adversary case in
9 the Bankruptcy Court for the District of Arizona, case number 2:10-bk-
10 32320-SSC.
- 11 (m) United States v. Breke, filed on the administrative docket at docket entry
12 333 and removed from the United States District Court for the Western
13 District of Washington, case number 2010 0328RSL.
- 14 (n) State of Arizona v. Albritton, filed on the administrative docket at docket
15 entry 334 and removed from Cochise County Superior Court, case
16 number 2011 00236.
- 17 (o) Chas Roberts Air Conditioning, Inc. v. Pekrul, filed on the administrative
18 docket at docket entry 335 and removed from the Maricopa County
19 Superior Court, case number CV2009-055160.
- 20 (p) Liebowitz v. Pekrul, filed on the administrative docket at docket entry 336
21 and removed from the Maricopa County Superior Court, case number
22 CV2009-050536.
- 23 (q) Federal National Mortgage Association v. Kelder, filed on the
24 administrative docket at docket entry 351 and removed from the Maricopa
25 County Superior Court, case number CV2011-00559.
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